

**Final**

**Rhode Island Supreme Court  
Ethics Advisory Panel Op. 2023-9  
Issued October 13, 2023**

FACTS

The inquiring attorney was retained by a client, Husband, to file a divorce action against Wife. Wife asked the inquiring attorney's parent, another Rhode Island attorney with a separate practice, to represent her in the ensuing divorce case. Unaware that the inquiring attorney already represented Husband, the inquiring attorney's parent agreed to the representation of Wife. Both Husband and Wife have verbally consented to the inquiring attorney and his/her parent continuing in their respective representations.

ISSUE PRESENTED

The inquiring attorney asks whether his/her representation of Husband and his/her parent's simultaneous representation of Wife in the same pending divorce action constitutes a conflict of interest.

OPINION

It is the Panel's opinion that, based on the facts presented, whatever conflict of interest exists as to the representations may be cured by the clients' written informed consent thereof.

REASONING

Rule 1.7 of the Rules of Professional Conduct, entitled "Conflict of Interest: Current Clients," states as follows:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

“Rule 1.7 is grounded primarily upon the attorney’s duty of loyalty to his or her client.” Markham Concepts, Inc. v. Hasbro, Inc., 196 F. Supp. 3d 345, 349 (D.R.I. 2016) (interpreting Rule of Professional Conduct 1.7). In matters involving opposing lawyers related by blood or marriage, “there may be a significant risk that client confidences will be revealed and that the lawyer’s family relationship will interfere with both loyalty and independent professional judgment.” Comment [11] to Rule 1.7. Accordingly, “a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent.” Id.

Here, the inquiring attorney has stipulated that opposing counsel is his/her parent. Ordinarily, this situation creates a conflict of interest because the extant family relationship may undermine the lawyers’ professional judgment and independence vis-à-vis their respective clients. However, the inquiring attorney has indicated that both Husband and Wife are aware of the lawyers’ family relationship and have verbally given their informed consent to the representations. Comment [11] to Rule 1.7 makes clear that informed consent may be used to cure a conflict of interest based on a family relationship between opposing counsel. Such consent shall be obtained in writing. See Rule 1.7(b)(4). Therefore, the inquiring attorney and his/her parent may continue in their respective representations of Husband and Wife so long as they obtain their clients’ informed consent to do so in writing.